



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 3, 2002

H.R. 1866

An act to amend title 35, United States Code, to clarify the basis for granting requests for reexamination of patents

As reported by the Senate Committee on the Judiciary on June 20, 2002

H.R. 1866 would alter the standards used by the Patent and Trademark Office (PTO) to accept or reject requests to reexamine a patent's validity. CBO estimates that implementing the act would cost the agency about \$1 million a year, assuming the appropriation of the necessary amounts. Enacting H.R. 1866 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 1866 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

H.R. 1866 would address a 1997 ruling by the U.S. Court of Appeals for the Federal Circuit that concluded the PTO may not grant a request to reexamine a patent if that request cites the same evidence presented in previous proceedings. Once that ruling was issued, reexamination requests declined from an average of about 400 a year to about 350 a year. Based on information from the PTO, CBO expects that implementing H.R. 1866 would cause the number of requests to increase. As a result, the agency would need to hire additional patent examiners to review the new requests and attorneys to handle any appeals arising from those cases. CBO estimates that adding those new staff would cost the agency about \$1 million a year, subject to the availability of appropriated funds.

On June 27, 2001, CBO transmitted a cost estimate for H.R. 1866, as ordered reported by the House Committee on the Judiciary on June 20, 2001. The language of the two versions of the legislation is nearly identical, and the estimated costs are the same.

The CBO staff contact for this estimate is Ken Johnson. The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.